रजिस्टर्ड नं० ल०-33/13-14/93.

राजपत्र, हिमाचल प्रदेश

(असाधारण)

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित

शिमला, मंगलवार, 29 जून, 1993/8 आषाढ़, 1915

हिमाचल प्रदेश सरकार

निर्वाचन विभाग

अधिसूचना

शिमला-171002, 25 जून, 1993

संख्या 3-3/87-ई०एल०एन.—भारत निर्वाचन आयोग की अधिसूचना संख्या 82/ हि. प्र.-वि. स./ 12/85, दिनांक 3 जून, 1993, तद्नुसार 13 ज्येष्ठ, 1915 (शक्), जिसमें उच्चतम न्यायालय द्वारा सिविल अपील सं० 1512(एन०सी०ई०) पर निर्णय है, सर्वसाधारण की सूचना हेतु प्रकाशित करती हूं।

आदेश से,

राजेन्द्र भट्टाचार्य,
मुख्य निर्वाचन अधिकारी,
हिमाचल प्रदेश।

1671-राजपत्र/93-29-6-93—1,173. (1165) मूल्य : 1 रुपया।

भारत निर्वाचन आयोग

निर्वाचन सदन,
अशोक रोड,
नई दिल्ली-110001.

दिनांक 3 जून, 1993

13 ज्येष्ठ 1915 (शक)

अधिसूचना

संख्या 82/हि. प्र.-वि. स./12/85.— निर्वाचन आयोग, 1985 की निर्वाचन अर्जी संख्या 12 में हिमाचल प्रदेश उच्च न्यायालय, शिमला के तारीख 26 मार्च, 1987 के निर्णय के विरुद्ध दाखिल की गई 1987 की सिविल अपील सं0 1512 (एन. सी. ई.) में भारत के उच्चतम न्यायालय के 5 मई, 1993 के निर्णय को लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 116 ग (2) (ख) के अनुसरण में, इसके द्वारा प्रकाशित करता है।

आदेश से,

हस्ताक्षरित/-
(घनश्याम खोहर),
सचिव
भारत निर्वाचन आयोग

ELECTION COMMISSION OF INDIA

Nirvachan Sadan,
Ashoka Road,
New Delhi-110001.

3rd June, 1993
Dated——————————
13 *Jyaishtha*, 1915 (*SAKA*)

NOTIFICATION

No. 82/HP-LA/12/85 .—In pursuance of section 116C (2)(*b*) of the Representation of the People Act, 1951, (43 of 1951), the Election Commission hereby publishes the judgment dated the 5th May, 1993 of the Supreme Court of India in Civil Appeal No. 1512 (NCE) of 1987 filed against the judgment dated 26th March, 1987 of the High Court of Himachal Pradesh at Shimla in Election Petition No. 12 of 1985.

By order,

Sd/-
(GHANSHYAM KHOHAR),
Secretary
Election Commission of India

IN THE SUPREME COURT OF INDIA

Civil Appellate Jurisdiction

Civil Appeal No. 1512 (NCE) of 1987

Thakur Sen Negi .. *Appellant*
Versus
Dev Raj Negi and Anr. .. *Respondents.*

JUDGMENT

AHMADI, J.

The appellant filed an Election Petition No. 12 of 1985 in the High Court of Himachal Pradesh under sections 80, 81, 100 and 101 of the Representation of the People Act, 1951 (hereinafter called the R. P. Act) challenging the election of respondent No. 1, Dev Raj Negi from Kinnaur (Scheduled Tribe) Assembly Constituency to the Himachal Pradesh Legislative Assembly. The appellant and respondent No. 1 were the only two candidates in the field. The Appellant contested the election as an independent candidate whereas respondent No. 1 was field as a candidate of the Congress (I) party. At the said election the total number of votes polled were 24, 536 out of which 834 were declared invalid. The appellant secured 10,843 votes while respondent No. 1 secured 12,859 votes. Respondent No. 1 was thus declared elected from the said constituency on 28th May, 1985 by a margin of 2,016 votes. The appellant alleges that respondents Nos. 1 and 2 jointly and severally committed certain corrupt practices by levelling accusations concerning him which were false to their knowledge and which they believed to be false. It is further contended that respondent No. 2 indulged in acts of corrupt practices with the consent of respondent No. 1. On account of their having resorted to corrupt practices, the result of the election was materially affected. According to the appellant respondent No. 2 with the consent of respondent No. 1 published and distributed posters wherein false allegations tarnishing his image were made with a view to prejudice the minds of the voters against him. Further, alleges the appellant, the Chief Minister, Virbhadra Singh toured the State between 11th and 23rd May, 1985 and made speeches at various places in the constituency of the appellant to the effect that if the voters from that constituency did not vote in favour of the Congress (I) candidate the existing projects will not be executed and new ones will not be undertaken in that constituency. The Chief Minister thus acted as the agent of respondent No.1 and made the speeches in the presence of the latter which were in the nature of veiled threats to the voters that if they did not vote for the Congress (I) candidate their constituency will suffer. The learned Judge of the High Court observed that in case the publication of the posters, such as Exhibit P1, is proved to have been made with the consent of respondent No.1 or his agent and the facts stated therein are shown to be false in relation to the personal character and conduct of the appellant and such statements are shown to have prejudiced the prospects of the appellant then such acts on the part of respondent No. 1 and his agent would amount to corrupt practice within the meaning of Section 123 of the R. P. Act.

Issues were framed on 8th January, 1986. In view of the passage of time the only issues which have relevance are those concerning corrupt practice which are three in number, namely :

"1. Whether the respondent No. 1 is guilty of having committed a corrupt practice of bribery as alleged in para 7(*a*)(*i*) to (*vii*) of the petition?

2. Whether the respondent No. 1 has committed a corrupt practice of undue influence as alleged in para 7(*a*)(*vii*) to (*xviii*) of the petition ?

3. Whether the respondents or their agents or other person, with the consent of the candidate, published a statement of fact which is false and which the respondents either believed to be false or do not believe to be true in relation to the personal character of the petitioner and such statement was reasonably calculated to prejudice the prospects of the

petitioner's election, as alleged in para 8 of the petition ? If so, whether the same is a corrupt practice within the meaning of section 123(4) of the Representation of People Act, 1951 ?"

In his behalf the allegation was that the poster Exh. P-1 was got printed at the instance of respondent No. 2 at the printing press of PW 68 Dinesh Kumar which allegation was denied by both the respondents. Twelve allegations of favouritism, nepotism, etc., were levelled in the poster against the appellant and names of thirteen beneficiaries were mentioned. Exh. R 6 as well as R 6A & R 6B are the manuscripts of the poster Exh. P1. Several witnesses came to be examined to bring home the charge set out in issue No. 3. RW 2 Jagat Singh, advocate, denied to have signed Exh. R 6 although his signature was found pasted on Exh. R6B which he explained by saying that in 1984 when elections were expected he had written to some press for printing dummy ballot papers and it seems his signature therefrom was lifted and pasted on Exh.R6B. Sohan Singh Negi, the scribe of the manuscripts was not examined. PW68 Dinesh Kumar stated that the poster Exh. P 1 was not printed at his press nor did he receive the manuscript from PW 67 Mul Raj. Even though PW 67 says he introduced Sohan Singh to PW 68, the latter says he does not know Sohan Singh, PW 68 says that someone had approached him for printing posters but since the advance was not paid he did not print the posters. He, however, admitted that Exh. P 53A was the receipt for Rs. 470/- received for printing the posters Exh. R7. The High Court after taking into account the evidence of PW 32 Davindar and PW 2 Bansi Lal, Advocate, opined that there was no reliable evidence to prove that the manuscript of Exh. P 1 was given to the press by respondent No. 2 or Sohan Singh. The High Court, therefore, rightly doubted the genuineness of the manuscripts.

Now the details regarding publication and distribution of posters are to be found in Paragraphs 8 and 39 of the Election Petition. The learned Judge in the High Court points out that although the names of the persons to whom the posters were distributed or the places where they were pasted have not been stated, that omission may not be material if the fact of publication and distribution is otherwise established. The learned Judge then examines the evidence in regard to the distribution of posters in different villages and finds the same unacceptable. He discusses the evidence of each witness in regard to the meetings held in various villages between 11th and 23rd May, 1985 addressed by RW 12 Virbhadra Singh. The learned Judge finds the quality of the evidence in regard to the election speeches of RW 12 not strong enough to conclude that he had uttered a veiled threat that if the voters did not vote for his party's candidate the developmental works and schemes in their areas would not be executed. Counsel submitted that the evidence of a host of witnesses was brushed aside solely on the ground that their names were not mentioned in the election petition as well as the affidavit of better particulars furnished at a later date. It must be remembered that in an election dispute the evidence is ordinarily of partisan witnesses and rarely of independent witnesses and, therefore, the court must be slow in accepting oral evidence unless it is corroborated by reliable and dependable material. It must be remembered that the decision of the ballot must not be lightly interfered with at the behest of a defeated candidate unless the challenge is on substantial ground supported by responsible and dependable evidence. The election result shows that both the contesting candidates were influential persons having a strong hold on large numbers of people of the constituency. Between the two the appellant was a far more influential person who had been in office since long and had held important positions. He had been in active politics for the last many years and had won many elections. Loss in this contest must have given him a rude shock. How an election court should evaluate the evidence in such a situation has been stated time and again by this Court. It would be sufficient if we extract a passage from this Court's decision in *Rahim Khan* v. *Khurshid Ahmed and Ors.* (1974) 2 SCC 660 at 671-672 (*para* 21) which reads thus :

> "We must emphasize the danger of believing at its face value oral evidence in an election case without the backing of sure circumstances or indubitable documents. It must be remembered that corrupt practices may perhaps be proved by hiring half-a-dozen witnesses apparently respectable and dis-interested, to speak to short and simple episodes such

as that a small village meeting took place where the candidate accused his rival of personal vices. There is no X-ray whereby the dishonesty of the story can be established and if the Court,were gullible enough to gulp such oral versions and invalidate elections, a new menance to our electoral system would have been invented through the judicial apparatus. We regard it as extremely unsafe, in the present climate of kilkenny-oat election competitions and partisan witnesses wearing robes of veracity, to upturn a hard won electoral victory merely becaute lip service to a corrput practice has been rendered by some sanctimonious witnesses. The Court must look for serious assurance, unlying circumstances or unimpeachable documents to uphold grave charges of corrupt practices which might not merely cancel the election result, but extinguish many a man's public life."

Since allegations in regard to corrupt practice are quasi-criminal in nature and entail the penalty of disqualification, the Court would be justified in looking for strong and dependable evidence and its refusal to base its decision on oral evidence alone would not be unjustified if the said evidence is not supported by strong, reliable and trustworthy corroboration. No exception can be taken to the Chief Minister canvassing for his party's candidate and highlighting the promises made in his party's election manifesto, proposed developmental programmes envisaged by his party, etc., if returned to power, but if he threatens people of dire consequences for their failure to vote for his candidate or even threatens to shut down developmental programmes and schemes of the area, that would be a different matter and courts would frown at such attempts. Taking the totality of evidence into account and having regard to the guidelines laid down by this court in various decisions the learned Judge held that the appellant had failed to prove the allegations regarding the corrupt practices. In his view the evidence consists of partisan witnesses who cannot be relied upon without responsible and dependable corroboration, which is totally lacking in this case. The learned Judge also felt that the evidence of the other witnesses whose names were not disclosed even till the affidavit for better particulars was filed cannot improve upon the evidence of partisan witnesses. It is this approach which is assailed before us.

The learned counsel for the appellant submitted that the learned judge failed to correctly appreciate the evidence tendered in support of the charge of corrupt practice and also wrongly ignored the evidence of a host witnesses examined to prove the same but we see no reason from the assessment of evidence by the learned Judge nor are we impressed by counsel's submission that material and important evidence was wrongly discarded. It is indeed true that the learned Judge discarded the evidence of certain witnesses on the ground that their names were not disclosed either in the election petition or in the subsequent statement giving better particulars.That may at first blush appear to be objectionable but on closer scrutiny it is clear that the learned Judge merely meant to say that their evidence had lost probative value since the quality of their evidence was further diminished by the non-disclosure of their names even at the time when the appellant was required to furnish better particulars. Section 87 of the R. P. Act provides that every election petition shall be tried as nearly as may be in accordance with the procedure applicable to the trial of suits under the Civil Procedure Code. Order XVI of the Code *inter alia* requires that on or before such date as the court may appoint, and not later than 15 days after the date on which the issues are settled, the parties shall present in court a list of witnesses whom they propose to call either to give evidence or to produce documents. Failure to do so can only be at the risk of affecting the quality of their evidence.Therefore, if the learned Judge did not place reliance on the evidence of those witnesses whose names were not disclosed, it cannot be said that the approach of the learned Judge was perverse as was submitted by the learned counsel for the appellant. This approach does not run counter to the decisions in *Rahim Khan's* case (*supra*) and *Mange Ram* Vs. *Brij Mohan* (1983) 4 SCC 36. The first decision turned on its own facts and on the evidence tendered in that case in regard to corrupt practice while in the second case the question was whether the court could refuse to examine the witnesses produced by the appellant on the sole ground that their names were not disclosed. In this case the witnesses were examined but the learned judge did not deem it wise to attach any weight to their evidence as the same stood weakened by the appellants failure to disclose their names at the earliest available opportunity.We have been taken through the relevant parts of the entire evidence, including the evidence of those whose

evidence had been ignored but we do not think that the election court had committed any grave error in the appreciation and assessment of the evidence placed on record.

From the above discussion it is clear that the High Court did not consider the evidence in regard to the printing of the poster Exh. P1 as dependable in view of the apparent conflict in the evidence of PW 68 and the evidence of PW 67. Non-examination of Sohan Singh and the conflict in the evidence of PW 67 and PW 68 insofar as the identity of the person who approached the latter left a void in the evidence which rendered the evidence somewhat infirm. The High Court also did not consider it wise to place implicit reliance on the oral testimony of partisan witnesses. It also rejected the evidence of those witnesses whose names were not disclosed in the election petition or in the affidavit giving better particulars on the ground that the omission rendered the evidence suspect. Placing reliance on the conduct of the appellant, a seasoned politician, in remaning quiet about the contents of the posters and not complaining to the election authorities, it held that the evidence fell short of establishing the charge of corrupt practice. In other words the High Court felt that the evidence fell short of meeting the strict-proof-requirement which is necessary in quasi criminal cases. Mere suspicion was not enough, positive proof was required which was not forthcoming. It, therefore, held that the charge of corrupt practice was not made out. Even though counsel for the appellant took us through the relevant evidence, we have not been able to see any serious infirmity in the approach of the High Court requiring out interference. The High Court had the advantage of watching the witnesses give evidence and was in a better position to judge what weight it should attach to the evidence of partisan witnesses or witnesses who had betrayed a bias for one or the other of the two contestants and hence this Court would ordinarily be slow in interfering with the assessment of their evidence by the High Court unless glaring infirmities are shown in the approach of the High Court in the scrutiny of evidence, both oral and documentary. We see no such infirmity and hence do not see the need to reassess the material evidence to which our attention was drawn.

We, therefore, see no merit in this appeal and dismiss it but in the circumstances of the case we make no order as to costs in this appeal.

Sd/-

(A. M. AHMADI)J.

Sd/-
(M. M. PUNCHHI)

New Delhi
May 5, 1993

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला-5 द्वारा मुद्रित तथा प्रकाशित।